



## **Conditions: Expert Determination - Dispute Resolution**

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# EXPERT DETERMINATION – DISPUTE RESOLUTION

## TABLE OF CONTENTS

1.	THE PROCESS FOR EXPERT DETERMINATION.....	5
2.	LETTER OF APPOINTMENT OF THE EXPERT.....	6
3.	RULES FOR THE EXPERT DETERMINATION PROCESS.....	7
4.	CODE OF CONDUCT FOR AN EXPERT.....	9

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# 1. THE PROCESS FOR EXPERT DETERMINATION

## 1.1 General

- 1.1.1 All disputes or differences arising out of, relating to or concerning Dispute Resolution shall be decided by the following process:
- a) The Process shall be effected by an expert agreed upon in writing by the parties within twenty-one (21) days (or such other period as may be agreed upon in writing by the parties) or in the event that no agreement on such appointment is reached, appointed upon the application of either party by the Chairman of the Institute of Arbitrators Australia Northern Territory Chapter.
  - b) The independent expert shall be appointed by letter of appointment in the form set out in Section 2 hereto.
  - c) The parties shall be bound by the Rules for the Expert Determination Process set out in Section 3 hereto.
  - d) The expert shall be bound by the Code of Conduct for an Expert set out in Section 4 hereto.
  - e) The expert shall be deemed not to act as an arbitrator and the determination of the dispute or difference in accordance with the Process set out in the Rules is not a process of arbitration within the meaning of the Commercial Arbitration Act (Northern Territory).

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## 2. LETTER OF APPOINTMENT OF THE EXPERT

TO

By Deed dated [ ] (the "Contract") between

[ ] of [ ]

and

[ ] of [ ] (collectively called "the parties"),

The parties agreed to submit certain disputes or differences that might arise between them to be determined by an expert through an expert determination process ("Process"), as established by the Contract, the Rules for Expert Determination ("Rules") and the Code of Conduct for an Expert ("Code of Conduct"), appendices to the Contract as contained in Attachment 1 to this letter.

A dispute or difference to be determined by the Process has arisen between the parties. A short summary of the dispute or difference is attached.

The parties agree to appoint you [ ] of [ ] to be the sole expert to determine the dispute or difference in accordance with the Process, the Rules and the Code of Conduct.

The parties agree to pay you for your services at the rate of \$[ ] per hour. The determination of the dispute or difference must be completed within three (3) months of the date of the commencement of the Process, which is the date of your acceptance of the appointment, unless the time is extended by agreement of the parties.

The parties agree that you shall not be liable for any act or omission done bona fide in the exercise or purported exercise of your functions as expert in accordance with the Rules and the Code of Conduct.

### **DATED:**

For and on behalf of [ ] (the "Contractor")

For and on behalf of [ ] (the "Principal", ie. the Northern Territory of Australia)

For and on behalf of the Expert

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## **3. RULES FOR THE EXPERT DETERMINATION PROCESS**

(Rules)

### **3.1 COMMENCEMENT**

3.1.1 The expert determination process ("Process") shall commence with the acceptance by the Expert of the appointment to act to determine the dispute or difference in accordance with these Rules and the Code of Conduct for Experts ("Code of Conduct").

### **3.2 WRITTEN SUBMISSIONS**

3.2.1 Within fourteen (14) days of the date of the commencement of the Process, the party requesting review (the Reviewer) shall provide to the Other Party and the Expert a statement of the dispute or difference, any agreed statement of facts and a written submission on the dispute or difference in support of their contention.

3.2.2 Within twenty-one (21) days thereafter the Other Party shall provide to the Reviewer and the Expert a written response to the written submission of the Reviewer.

3.2.3 If, upon the application of the Reviewer, the Expert considers it appropriate, the Reviewer may make a written response to the response of the Other Party under sub-clause 3.2.2 above within the time allowed by the Expert.

3.2.4 If the Expert decides further information or documentation is required for the determination of the dispute or difference the Expert may:

a) require a further written submission or documents from either or both parties, giving each party a reasonable opportunity to make a written response to the other's submission; and

b) he/she may call a conference between the parties and the Expert in accordance with clause 3.3 below.

### **3.3 CONFERENCE**

3.3.1 When the Expert determines that a conference, between the parties is necessary, the Expert shall be responsible for arranging the conference at a venue and time convenient for the parties and shall notify them accordingly.

3.3.2 At least seven (7) days prior to the conference, the Expert shall inform the parties of the matters to be addressed at the conference.

3.3.3 At the time and place notified for any conference the parties shall appear before the Expert to make representations on the matters the subject of the conference.

3.3.4 The Expert in conducting the conference is not bound by the rules of evidence.

3.3.5 At a conference either party may have legal or other representation.

3.3.6 The conference shall be held in private.

3.3.7 Transcripts of the conference proceedings will be taken and be available to the Expert and the parties if so required by either party.

3.3.8 All proceedings and submissions relating to the Process shall be kept confidential between the parties and the Expert. No information shall be divulged to any other party, at any time or in any circumstances except with the prior written consent of the parties or as may be required by law or in order to enforce the determination of the Expert.

### **3.4 THE DETERMINATION**

3.4.1 As expeditiously as possible after the receipt of the submissions or after any conference and, in any event not later than three months after the commencement of the Process unless the time has been extended by agreement between the parties, the Expert shall

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determine the dispute or difference between the parties and notify such determination in writing to the parties.

3.4.2 Where the determination made by the Expert contains:

- a) a clerical mistake;
- b) an error arising from an accidental slip or omission;
- c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
- d) a defect of form,

the Expert shall correct his/her determination.

### **3.5 TERMINATION**

3.5.1 Subject to sub clause 3.4.2, the Process shall conclude when the Expert has notified his/her determination to the parties.

3.5.2 The Process shall be terminated in the event of the Expert being unable to conclude the Process by reason of his/her illness, death, being of unsound mind or failure to act and in any such event the provision of the Contract relating to the determination of disputes or differences by an expert shall apply.

### **3.6 COSTS**

3.6.1 Each party shall bear its own costs of the Process and shall share equally the costs of the Expert and the Process.

3.6.2 Security for costs shall be deposited, by both parties at the commencement of the Process, at the direction of the Expert.

3.6.3 Where the Process is terminated prior to the determination of the dispute or difference each party shall bear its own costs of the process so far. The costs of the Expert and of the Process shall be borne equally by the parties.

### **3.7 MODIFICATION**

3.7.1 Unless otherwise stated these Rules shall be modified only by agreement of the parties and of the Expert.



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## 4. CODE OF CONDUCT FOR AN EXPERT

(Code of Conduct)

The function of the Expert is to make a determination on the dispute or difference in accordance with the Rules, this Code of Conduct, and the letter of appointment of the Expert.

The Expert shall receive the written submissions and responses of the parties in accordance with the procedures specified in the Rules and may require such further information or documentation from the parties as he/she thinks is necessary for the determination of the dispute or difference in accordance with the procedures specified in the Rules.

The Expert shall decide whether a conference between the parties and the Expert is necessary for receiving further information on any specified matter(s). If such a conference is thought to be necessary the Expert shall inform the parties of the precise subject matter(s) of the hearing and shall hear representations only on these matter(s).

The Expert is not bound by the rules of evidence and may receive information at any conference in any manner he/she thinks fit, providing that, at all times, the requirements of procedural fairness are met.

The Expert shall disclose all information and documents received from either party to the other party. Where a party fails to make a written submission or appear at any conference after having received due notice, the Expert may proceed with the Process. Save as provided above, consultation shall only take place in the presence of both parties.

The Expert shall reach his/her determination on the basis of the information received from the parties and on the basis of his/her own expertise. The decision shall be reached as an expert and not as an arbitrator. The Expert's determination shall be made as expeditiously as possible, but in any event no later than three months after the commencement of the Process, unless the time is extended by agreement between the parties. The determination, signed by the Expert, shall be notified to the parties in writing forthwith.

The Expert shall respect the confidentiality of all information received either through written submissions or oral proceedings. No information acquired through the Process shall be divulged to any other body except with the prior written consent of the parties.

If the Expert becomes aware of any circumstances that might reasonably be considered to affect adversely his/her capacity to act independently or impartially he/she must inform the parties immediately. The Expert must in such circumstances terminate the proceedings, unless the parties agree otherwise.